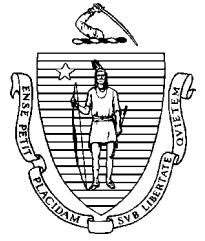




# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 462

## IN THE MATTER OF ROBERT BURGMANN

### DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Robert Burgmann (Mr. Burgmann) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 10, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Burgmann. The Commission has concluded its inquiry and, on February 23, 1993, by a majority vote, found reasonable cause to believe that Mr. Burgmann violated G.L. c. 268A.

The Commission and Mr. Burgmann now agree to the following findings of fact and conclusions of law:

1. Mr. Burgmann was, during the time here relevant, the Sandwich Planning Board Chairman. As such, Mr. Burgmann was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. "RUCK" systems are nitrate reducing septic systems. SE RUCK Systems Inc. (SE RUCK) is a Massachusetts corporation licensed to design the RUCK system in Massachusetts for the patent holders. For several years, SE RUCK attempted to obtain the Department of Environmental Protection's (DEP) approval for installation of the RUCK system in Massachusetts.

3. During the time here relevant, Mr. Burgmann was an officer, director, employee and 20% owner of SE RUCK.

4. Ryder Woods Associates (Ryder Woods) was the developer of a proposed 76 single-family unit affordable housing subdivision in Sandwich.

5. On February 13, 1990, the Sandwich Zoning Board of Appeals (ZBA) granted Ryder Woods a comprehensive permit with 29 conditions to build the above-mentioned development. Due to the fact that the proposed project was located in a zone of contribution to a public water supply; that the project itself would not be serviced by town water but by individual wells; and concerns regarding nitrate loading created by this development, the ZBA imposed condition #26 which provided as follows:

Should DEP authorize the utilization of a septic system designed to reduce nitrate loading<sup>1/</sup> prior to the completion of the development then the applicant shall be required to install these new type systems. No septic system shall be required to be removed after it has been installed.<sup>2/</sup>

6. On January 29, 1991, Mr. Burgmann, as Planning Board Chairman, wrote a memorandum on Planning Board stationery to the Board of Health (BOH) Chairman stating:

This letter is to inform the BOH that the DEP has recently approved a nitrate reducing system. Condition #26 of the Ryder Woods Associates comprehensive permit requires all homes in the development shall be

served by a nitrate reducing septic system. Therefore, the Planning Board requests, that the BOH require the developers to adhere to this Condition.

7. Depending upon the number of RUCK systems that would have been required to have been installed at the Ryder Woods project, the average fee per unit that would have been generated for engineering services by SE RUCK would have been between \$200 and \$500.

8. Mr. Burgmann, as a 20% shareholder, would ultimately have been a beneficiary of the fees generated by this project.

9. In a March 26, 1991 letter to Ryder Woods, the ZBA stated that it was not requiring Ryder Woods to install the RUCK system.

10. Section 19 of G.L. c. 268A, except as permitted by paragraph (b),<sup>3/</sup> prohibits a municipal employee from participating<sup>4/</sup> as such an employee in a particular matter<sup>5/</sup> in which to his knowledge he has a financial interest.

11. The determination or decision by the ZBA as to whether it would require the installation of a nitrate reducing septic system in the Ryder Woods affordable housing project in accordance with condition #26 was a particular matter in which the town had a direct and substantial interest.

12. Mr. Burgmann, by writing the January 29, 1991 memorandum to the BOH advocating installation of the RUCK system, was personally and substantially involved as the Planning Board Chairman in the just described particular matter. Therefore, he participated in that matter.

13. Mr. Burgmann, as an officer, director, employee and 20% owner of SE RUCK, had a financial interest in seeing the RUCK system installed in the Ryder Woods affordable housing project. Mr. Burgmann was aware of that financial interest.

14. Therefore, by writing the January 29, 1991 memorandum to the BOH, Mr. Burgmann participated as chairman of the Planning Board in a particular matter in which he had a financial interest, thereby violating §19.

In view of the foregoing violation of G.L. c. 268A by Mr. Burgmann, the Commission has determined that the public interest would be served by the disposition of this matter without further

enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Burgmann:

(1) that Mr. Burgmann pay to the Commission the sum of one thousand (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §19;

(2) that Mr. Burgmann waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

**Date: March 15, 1993**

<sup>1/</sup> "Nitrate loading" refers to nitrates produced by septic systems which can pollute the ground water.

<sup>2/</sup> Mr. Burgmann did not participate in the drafting of this condition nor is there any evidence that he did anything which would have influenced the ZBA to impose this condition. The project was modified and as reduced would generate 7.8 P.P.M. of nitrates, which was 56% higher than levels recommended by the Cape Economic and Development Commission and the Cape Cod Commission.

<sup>3/</sup> None of those exemptions applies here.

<sup>4/</sup> "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>5/</sup> "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim,

controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).